



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 14 June 2023

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Spangenberg and Others v Engelbrecht NO and Another (717/21) [2023] ZASCA 100 (14 June 2023)

Today the Supreme Court of Appeal (SCA) dismissed an appeal against the judgment of the Northern Cape Division of the High Court, Kimberley (Lever J sitting as a court of first instance).

The dispute concerned the interpretation of the deceased's last will and testament. It emanates from a dispute between the appellants – the children of deceased, and the respondents – the executor of the deceased estate (Mr. Engelbrecht) and the widow of the deceased, who is also the step-mother of the appellants. The deceased executed his Will in July 1992, He died on 15 January 2010.

Clause 2B(i) of the Will, which is the clause in issue, provided for the bequest of two plots (plot 423 and 741) to his daughters, subject to a right of *habitatio* over the plots, in favour of his wife, the second respondent. The appellants argued that prior to his death, they and the deceased had informally agreed to subdivide one of the plots (plot 741) amongst the three of them, and that their homes and other flatlets had been constructed thereon. The first appellant received rentals from the flatlets. They also referred to the fact that in the ANC concluded between the deceased and the second respondent, in 1985, the *habitatio* was granted only in respect of one of the plots on which the matrimonial residence was situated (plot 423). The appellants argued that these surrounding circumstances should be taken into account in

interpreting the Will and that, based on the context, the deceased could only have intended to grant the *habitatio* over plot 423.

In arriving at the decision to dismiss the appeal, the Court addressed the principle of freedom of testation which states that testators have the freedom to dispose of their property in any manner they deem fit, unless the law places restrictions thereon. The SCA considered the context in which the Will was to be interpreted. The deceased executed his Will after the agreement between him and the appellant had been concluded. The rentals from plot 741 were to be utilised as maintenance for his widow. His intention in the Will was clear and unambiguous. Utilising either the 'golden rule', or 'the armchair approach', or the 'unitary approach' as set out in *Endumeni*, to interpret the Will, there was no place to admit extrinsic evidence to contradict the clear words of the Will. The SCA therefore dismissed the appeal with costs (to be paid jointly and severally by the appellants, the one paying the others to be absolved).